

Message Text

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SCA/SCS:RJBOYLAN

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FM SECSTATE WASHDC

TO AMEMBASSY TOKYO IMMEDIATE

UNCLAS STATE 279329

E.O.11652: N/A

TAGS: CGEN,JA

SUBJECT: DEPARTMENT OF JUSTICE DEPOSITION REQUEST

REF: TOKYO 16612

1. AFTER FURTHER CONSIDERATION, DEPARTMENT CONCLUDES THAT PROPOSAL TO HOLD DEPOSITIONS AT EMBASSY DOES NOT PRESENT ANY INSUPERABLE DIFFICULTIES FOR US. WITNESSES HAVE VOLUNTARILY AGREED TO GIVE DEPOSITIONS AND FOR REASONS OF SELF INTEREST CAN PROBABLY BE COUNTED ON TO COOPERATE IN PROCEEDING REGARDLESS OF LOCALE. JAPANESE POLICE WILL ESCORT WITNESSES TO AND FROM EMBASSY AND WHILE EMBASSY IS FARTHER FROM PRISON THAN IS YOKOSUKA BASE, DISTANCE ITSELF SHOULD NOT BE MAJOR FACTOR. WHILE STILL SUBJECT TO JAPANESE JURISDICTION, INVIOABILITY OF EMBASSY WOULD HAVE TO BE WAIVED TO GIVE IT EFFECT, ONCE WITNESSES AND DEFENDANTS WITHIN EMBASSY. AMBASSADOR IS AUTHORIZED AT HIS DISCRETION TO WAIVE INVIOABILITY OF EMBASSY FOR SPECIFIED PURPOSES OF DEPOSITION AS DESCRIBED HEREIN. DEPT. WOULD HAVE NO OBJECTION SHOULD JAPANESE POLICE ASK TO HAVE PLAIN CLOTHES OFFICERS PRESENT, BUT WOULD PREFER THAT WITNESSES NOT BE HANDCUFFED DURING DEPOSITION. DEPT. BELIEVES WITNESSES WILL VOLUNTARILY LEAVE

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EMBASSY AFTER DEPOSITIONS, BUT SHOULD THEY FOR ANY REASON

REFUSE TO DO SO, EMBASSY SHOULD PROMPTLY REQUEST JAPANESE POLICE TO REMOVE THEM FROM EMBASSY, AS FUGITIVES FROM JAPANESE JUSTICE. WHILE DEFENDANTS HAVE ATTEMPTED AND MAY CONTINUE TO ATTEMPT TO FRUSTRATE DEPOSITIONS THROUGH LEGAL

AND PROCEDURAL MANEUVERS, DEPT. DOES NOT FORESEE THAT THEY WOULD ATTEMPT TO REMAIN IN EMBASSY AFTER DEPOSITION OR SEEK TO EMBARRASS EMBASSY BY NECESSITATING THEIR FORCIBLE REMOVAL FOR THIS WOULD PREJUDICE THEIR CASE. HOWEVER, SHOULD THEY DO SO EMBASSY SHOULD ASK JAPANESE POLICE TO REMOVE DEFENDANTS AS TRESPASSERS.

2. DEPT. AUTHORIZES EMBASSY TO FORMALLY PURSUE THIS ALTERNATIVE WITH FONOFF AND SEEK THEIR AGREEMENT BEFORE DEC. 27 ON SPECIFIC DATE FROM DEPOSITIONS PREFERABLY DURING WEEK OF JANUARY 6 BUT LATER IN JANUARY IF NECESSARY.

3. AS THIS ALTERNATIVE MAY PROVIDE SOLUTION TO CURRENT DIFFICULTIES, DEPT. DOES NOT BELIEVE IT IS DESIRABLE TO FURTHER PURSUE QUESTION OF DIFFERING INTERPRETATIONS OF MEANING OF DEPOSITIONS IN CONSULAR CONVENTION AT THIS TIME. HOWEVER, DEPT MAY WISH TO RAISE ISSUE AT LATER DATE.

4. DURING MEETING WITH HOTTA DEC. 11, DEPTOFFS DID NOT/ NOT MENTION DATE OF FEB 3. CONGEN WAS CORRECT IN STATING THAT FEB 3 WAS TOO CLOSE TO FEB 10 TRIAL DATE. PERHAPS MISUNDERSTANDING AROSE FROM DEPTOFFS MENTION THAT IF DEPOSITIONS NOT TAKEN IN JANUARY TRIAL WOULD HAVE TO BE DELAYED WITH POSSIBILITY THAT CASE MIGHT THEN BE DISMISSED WITH PREJUDICE. AS THE 3RD IS FIRST FULL WORKING DAY IN FEBRUARY, PERHAPS HOTTA REPORTED "BEFORE FEB 3" INSTEAD OF "IN JANUARY".

5. JAPANESE VISA APPLICATIONS FOR THREE OF DEFENDANTS WERE GIVEN TO JAPANESE CONGEN SAN FRANCISCO ON DEC. 18. POWELL STILL HAS NOT COMPLETED APPLICATION.

6. JUSTICE AND STATE DEPTS. APPRECIATE AMBASSADOR'S
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AND EMBASSY'S EFFORTS IN THIS CASE. SISCO

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